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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

In re DATREON M., a Person Coming Under the Juvenile Court Law.	B148529 (Los Angeles County Super. Ct. No. YJ10937)
THE PEOPLE, Plaintiff and Respondent, v. DATREON M., Defendant and Appellant.	

APPEAL from the judgment of the Superior Court of Los Angeles County. Marcus Tucker, Judge. Affirmed.

Saiid Arjomand, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Marc E. Turchin and Jennifer A. Jadovitz, Deputy Attorneys General, for Plaintiff and Respondent.

On September 15, 2000, on the campus of Gardena High School, Datreon M. (appellant) engaged in aggressive physical acts toward a female student, resisted arrest, and verbally threatened a school district peace officer. The juvenile court sustained an amended petition that set forth in count 1 the crime of misdemeanor terrorist threat (Pen. Code, § 422);[1] in count 2, misdemeanor assault of a school district peace officer (§ 241.1); and in count 3, misdemeanor resisting arrest (§ 148, subd. (a)(1)). The juvenile court ordered appellant to remain a ward of the court (Welf. & Inst. Code, § 602), imposed a total maximum confinement time of one year six months, and placed him home on probation. The conditions of probation required, inter alia, that appellant (1) "submit person and property to search and seizure at any time of the day or night by any law enforcement officer with or without a warrant"; and (2) "[c]ooperate in a plan for psychiatric, psychological testing or treatment. Anger management counseling."

Appellant contends the evidence is insufficient to support the finding that he uttered a terrorist threat. He also contends the juvenile court erred in imposing the noted conditions of probation. Based upon the evidence set forth in the record, we conclude the juvenile court properly sustained the petition. We also hold appellant has waived the issue of the appropriateness of the two probation conditions. Thus, we affirm the judgment in its entirety.

DISCUSSION

I. Sufficiency of the Evidence Supporting the Terrorist Threat Finding

Four elements must be proven to establish the crime of making a terrorist threat (§ 422):

1. The accused willfully threatened to commit a crime that would result in death or great bodily injury to another person.
2. The accused made the statement with the specific intent that the statement be understood as a threat.

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[1] All further statutory references are to the Penal Code, unless otherwise stated.

3. The statement "is so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat."

4. The statement "thereby causes that person reasonably to be in sustained fear for his or her own safety or for his or her immediate family's safety . . . ."

Appellant concedes the evidence is sufficient to support the findings as to the first two elements but asserts the evidence is insufficient to satisfy elements 3 and 4. As required, we review the record in the light most favorable to the judgment. (*People v. Osband* (1996) 13 Cal.4th 622, 690; *In re Jesse L.* (1990) 221 Cal.App.3d 161, 165.)

Armando Farias, a police officer for the City of Los Angeles Unified School District, testified he was in uniform and on duty at Gardena High School on September 15, 2000, at approximately 10:20 a.m. when he received a call informing him there was an argument occurring in the faculty parking lot.

When Officer Farias and a campus aide arrived at the site, the officer heard appellant yelling at Tristina M. (Tristina). Appellant grabbed Tristina by the arm to prevent her from leaving the area. Tristina told appellant to let her go. Officer Farias ordered appellant to step away from Tristina. Appellant became very agitated and said to the officer, "'None of your business[,] Pig. Between me and my lady lover. Me alone.'"

Officer Farias asked appellant a second time to step away from Tristina. Appellant clenched his fist and said, "'Fuck you[,] Homie. You better step back.'" Appellant looked upset but was not crying. Officer Farias removed a pepper spray canister from its holder. Appellant ran from the area and yelled, "'Now, you got to do your job. Fucking Pig. Chase me. See if you can catch me.'"

Officer Farias asked Tristina what had happened. Tristina, who appeared to be very upset and was crying, explained that appellant had seen her kissing another boy on campus, had become angry, and had slapped her in the face with a paper. She had tried to leave the campus but appellant had grabbed her and prevented her from doing so. She told the officer

she did not want appellant grabbing her any more. Officer Farias asked Tristina if she wanted appellant arrested, and Tristina said yes.[2]

Officer Farias notified campus personnel he was looking for appellant in connection with a battery, and he asked that anyone who saw appellant inform him of the location but not approach appellant.

After receiving information indicating appellant was in the gymnasium, Officer Farias, followed by Officer Browder, saw appellant sitting on the bleachers. At least 100 other students were in the area, as well as the school dean. Officer Farias ordered appellant off the bleachers and advised appellant he was under arrest for battery. Appellant stepped off the bleachers. Officer Farias advised appellant to turn around. When appellant did not move, Officer Farias placed his hands on appellant's shoulders and started to turn him around using minimal force. Officer Farias was five feet 10 inches tall and weighed 210 pounds. Appellant appeared to be five feet five inches to five feet seven inches tall and between 130 and 150 pounds.

Officer Farias reached for appellant's left arm to place it in a rear lock to handcuff appellant. Appellant pulled away and swung his left arm towards the officer, hitting him in the chest. Appellant then struck Officer Farias in the shoulder area with his right arm. Appellant climbed a short distance up the bleachers, and Officer Farias grabbed him from behind with both arms. Appellant fell onto the bleachers and the officer fell on top of him. Officer Farias grabbed appellant's left arm to handcuff him but could not get control of appellant's right arm. Officer Farias and appellant continued to struggle, and Officer Browder intervened. Officer Browder, six feet four inches tall and weighing about 310 pounds, placed appellant in a "departmental approved carotid restraint hold" without applying pressure to the carotid. When appellant stopped resisting, Officer Browder told

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[2] Tristina later testified for the defense and denied appellant had hit her with the piece of paper in anger, asserting it had been a joke, and that he had been hugging her rather than restraining her. The court dismissed a fourth count, alleging assault of Tristina, on the ground of insufficient evidence.

Officer Farias to grab appellant's arm and handcuff him. It had taken approximately 10 to 15 seconds to control appellant. Appellant had cursed the officers throughout the encounter. Officer Farias decided to get appellant out of the gymnasium quickly because some of the students were creating a hostile environment. The incident in the gymnasium from initial contact to handcuffing had taken approximately one minute.

As Officer Farias led appellant off the bleachers and out of the gymnasium, appellant told the officer to get off him and to leave him alone. On the way to the school police office, about 100 to 150 yards from the gymnasium, appellant began yelling and cursing. Appellant tried to pull away from the officer. Appellant claimed Officer Browder had choked him, and appellant asked why he was being arrested since he had not hit Tristina. Officer Farias told appellant to stop pulling away and to wait until they got to the office to talk about what was happening. At some point, appellant complained that the handcuffs were too tight and asked Officer Farias to loosen them. The officer loosened the cuffs when they arrived at the office.

After entering the office, appellant again started cursing Officer Farias. Appellant made numerous threats, including telling the officer that if he took his badge and gun off, appellant would "fuck [the officer] up"; and that "[t]hat shit isn't over"; and that appellant would "kick" the officer's "ass." At some point, Officer Farias advised appellant he was making terrorist threats, that he was under arrest for battery, and that appellant could not "make threats like that." Appellant responded, "I don't give a shit. Fuck the pigs."

At some point appellant and Officers Farias and Browder were in the dean's office, where appellant continued to be upset and to use profanity. Officer Browder helped transport appellant to the Los Angeles Police Department Harbor Division Station.

Officer Farias testified he had had 50 to 60 contacts with appellant on the Gardena High School campus in the past, and in some cases the officer had reported to the administrative dean or assistant principal appellant's statements regarding what appellant "would do." The officer had not considered appellant to be a "notorious trouble-maker"; he described appellant as "misguided." Appellant had never struck the officer before the September 15 incident. Officer Farias had taken appellant's threats seriously and believed

appellant "was capable of coming back and . . . going forward with the threats." The officer testified: "We're going to a school campus. We know. Worry constantly. It was a concern of mine. A fear that he would come back and go forward on those threats."

A. Nature of the Statements

Appellant first argues that the statements he would "fuck [the officer] up," "[t]hat shit isn't over," and he would "kick" the officer's "ass" are not "so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat." (§ 422.) We disagree.

Interpreting the language of section 422, the reviewing court stated in *People v. Stanfield* (1995) 32 Cal.App.4th 1152, 1157: "The statute punishes those threats which convey to the victim a gravity of purpose and an immediate prospect of execution. The use of the word 'so' indicates that unequivocality, unconditionality, immediacy and specificity are not absolutely mandated, but must be sufficiently present in the threat and surrounding circumstances to convey gravity of purpose and immediate prospect of execution to the victim." (*Id*. at p. 1157.) Section 422 does not require communication of "a time or precise manner of execution" (*In re David L.* (1991) 234 Cal.App.3d 1655, 1660), nor does it require "an immediate ability to carry out the threat." (*People v. Lopez* (1999) 74 Cal.App.4th 675, 679; *In re David L.*, *supra*, at p. 1660.) The history of the relationship of the parties may also be a relevant circumstance in determining the nature of the threat. (*People v. Butler* (2000) 85 Cal.App.4th 745, 754.)

In the instant case, appellant and Officer Farias had a history of 50 to 60 contacts on the Gardena High School campus, some serious enough for the officer to report appellant's statements to the administration. On September 15, 2000, appellant, for the first time, went beyond verbal insults and twice struck Officer Farias in an attempt to resist arrest for battery of Tristina. Appellant's attempt to escape required the combined efforts of both Officer Farias and Officer Browder to subdue and handcuff him, despite the greater size and weight of each officer as compared to that of appellant. Officer Farias not only sensed appellant's anger and rage but the hostility of students in the area of the altercation. In response to this hostility, Officer Farias quickly removed appellant from the area.

Against this background appellant made his threats in the campus police office to "fuck [the officer] up" if he took his badge and gun off, "[t]hat shit isn't over," and he would "kick" the officer's "ass." As previously noted, appellant concedes his statements constitute threats to commit a crime that would result in death or great bodily injury to Officer Farias, and that he made the statements with the specific intent that the officer understand the statements as threats.

With regard to the elements "gravity of purpose" and "immediate prospect of execution of the threat" (§ 422), the conditional language lessens the strength of the first threat when it is isolated from the surrounding circumstances. However, the history of the relationship of the parties makes clear that appellant did not fear Officer Farias with or without his uniform and gun, or even when assisted by another uniformed officer. In addition, there were students in the area at the time of the arrest who created an atmosphere of hostility towards the officers, indicating some sympathy for appellant and the possibility of aiding appellant, then or in the future. The sharply escalating conflict between appellant and Officer Farias, coupled with appellant's abiding anger, the hostility of other students, and the visibility of Officer Farias in his assignment at the school support the finding of the court that appellant's statements were sufficiently "unequivocal, unconditional, immediate, and specific" to convey to Officer Farias "a gravity of purpose and an immediate prospect of execution of the threat."[3] (§ 422.)

B. Sustained Fear

Appellant argues that his remarks were not sufficient to cause Officer Farias reasonably to be in sustained fear for his personal safety. The record does not support appellant's position. We have previously noted appellant's concession that he intended Officer Farias to understand his statements as threats to inflict great bodily injury or death.

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[3] Appellant's reliance on *In re Ricky T.* (2001) 87 Cal.App.4th 1132, is misplaced. Although there is some similarity in the threats in that case and the one at bar --"I'm going to kick your ass" -- there were no surrounding circumstances that would elevate the statements to the level required to satisfy the elements of section 422. (*In re Ricky T.*, *supra*, at pp. 1137-1139.)

As set forth above, there was a long history of conflict between the parties, a conflict that had escalated and resulted in physical violence against the officer by an apparently fearless appellant. The uniformed officer was regularly assigned to Gardena High School, and therefore those seeking to harm him could locate him as easily as those in need of his help. Given the hostile reactions of some of the other students during the detention and arrest of appellant, Officer Farias reasonably could believe that appellant had friends who would take his part in exacting the promised revenge. Officer Farias testified he took appellant's threats seriously and indicated that he and other officers constantly worried about the risks of the campus assignment. Finally, the officer twice testified he believed appellant would return to the campus to carry out his threats to harm him. These circumstances were "such as to convey to the victim an immediate prospect of execution of the threat and to render [the victim's] fear reasonable." (*People v. Garrett* (1994) 30 Cal.App.4th 962, 967.)

II. Conditions of Probation

The record reflects that defense counsel, the prosecutor, and the court referred to the probation report immediately after the court sustained the amended petition. All were dissatisfied that the probation officer had included a "rap sheet" rather than a narrative of appellant's background. The court continued the disposition hearing to allow the probation officer time to prepare a supplemental report that would include appellant's "past offenses in narrative form" to enable the court to evaluate them for purposes of disposition.

At a January 11, 2001 hearing, the court referred to the supplemental probation report, indicating it bore the date of the hearing. The report recommends, inter alia, the following conditions of probation: "25 SUBMIT TO SEARCH AND SEIZURE BY LAW INFORCEMENT [*sic*] OFFICER W/WITHOUT WARRANT." "26 COOPERATE IN PLAN FOR PSYCHIATRIC/PSYCHOLOGICAL TESTING/TREATMENT."

The prosecutor again found fault with the report but indicated his belief there was enough indication of appellant's contacts with law enforcement to merit camp detention. The court disagreed with the prosecutor's recommendation, finding it too harsh given the petition sustained. The court commented in part: "It looks like he needs some kind of counseling, anger management counseling, but I don't think Youth Authority or camp . . .

[are warranted by] these facts and this situation." The court then asked if there was any legal cause why disposition should not occur, and defense counsel answered no. The court imposed a Juvenile Hall detention of 99 days and then gave appellant credit for 99 days served. The court imposed various conditions of probation, including those appellant asserts as error. Appellant made no objection to any condition.

Appellant now assigns error to the imposition of the search and seizure condition and the psychiatric or psychological testing or treatment requirement. Appellant argues that the first condition "was unreasonable, did not bear any relationship to the crime for which the petition was sustained and was not reasonably related to avoidance of any future criminality." With respect to the psychiatric or psychological testing or treatment requirement, appellant argues the court erred because "there was no evidence appellant suffered from any psychiatric or psychological problem."

Although appellant concedes he registered no objection to any condition, he asserts that the proceedings and case law support his position that he did not waive these issues. We conclude appellant is barred from raising his objections on appeal.

Appellant first acknowledges that several cases support the doctrine of waiver where the juvenile defendant failed to object to parole conditions during the disposition hearing. (*In re Josue S.* (1999) 72 Cal.App.4th 168; *In re Khonsavanh S.* (1998) 67 Cal.App.4th 532; *In re Abdirahman S.* (1997) 58 Cal.App.4th 963.) However, appellant argues his case can be distinguished, asserting that unlike the cases cited "there is no evidence in this record to indicate that appellant or defense counsel had an opportunity to argue the contents of the probation report or [that they] submitted on its recommendations." The record, as set forth above, is to the contrary. There was ample opportunity both before and during the disposition hearing for appellant and his counsel to respond to the conditions of probation, but there was no objection.

Appellant next relies on *In re Tanya B.* (1996) 43 Cal.App.4th 1, for its holding that a juvenile defendant should be allowed to raise a probation condition issue for the first time on appeal because the juvenile has no choice whether to accept or refuse the condition. (*Id*. at p. 5.) Appellant's reliance is misplaced. *In re Tanya B.* has been a minority view,

receiving strong criticism in *In re Abdirahman S., supra*, 58 Cal.App.4th at page 970, and *In re Josue S., supra*, 72 Cal.App.4th at pages 171 through 173. In addition, Division Four of this district, which authored *In re Tanya B.*, has recently overruled the case in *In re Justin S.* (Nov. 6, 2001, B148299) ___ Cal.App.4th ___ [pp. 4-5], except when the issue on appeal is a constitutional question.

Because appellant had a meaningful opportunity to object to the probation conditions and failed to do so, and because he raises no constitutional issues with respect to the probation conditions, we conclude that he has waived these issues.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

_____, J.
DOI TODD

We concur:

_____, P.J.
BOREN

_____, J.
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